

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

10/04/2001

CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES

M. Cearfoss
Deputy

LC 2001-000027

FILED: _____

STATE OF ARIZONA

ANDREW M DAVIDSON

v.

LARRY DEAN KEEVY

STASY D CLICK

REMAND DESK CR-CCC
TEMPE CITY COURT

RULING
AFFIRM/REMAND

TEMPE CITY COURT

Cit. No. 1091319

Charge: A. ASSAULT/DOMESTIC VIOLENCE

DOB: 08-04-1957

DOC: 08-05-2000

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This case has been under advisement since oral argument on September 17, 2001. This decision is made within 30 days as required by Rule 9.8, Maricopa County Superior Court Local

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Rules. The Court has considered the memoranda submitted by counsel and their arguments, and the record of the proceedings before the Tempe City Court.

Appellant, Larry Dean Keivy, was charged with Assault, a domestic violence offense, in violation of A.R.S. Section 13-1203(A)(1), a class 1 misdemeanor. The trial court's record shows that on August 2, 2000, Appellant entered a plea of not guilty and his request for a court-appointed attorney was denied. The record also reveals that Appellant's income and assets disqualified him from being eligible for a court-appointed counsel utilizing any definition of indigency. Appellant was granted a motion to continue on September 12, 2000, so that he could consult with counsel or obtain counsel, and the trial was scheduled for November 30, 2000, at 1:30 p.m. The record also reveals that from the time of his not guilty plea to trial, Appellant was given nearly four months to locate, retain and consult with an attorney. Appellant contends on appeal that there was no valid waiver of counsel by him, but even if he did validly waive his right to counsel (the document is dated October 10, 2000, and signed by Appellant and the judge), Appellant claims that he validly revoked his waiver of counsel just prior to trial.

Rule 6.1(d), Arizona Rules of Criminal Procedure, provides:

(d) Unreasonable Delay in Retaining Counsel.

If a non-indigent defendant, or an indigent defendant who has refused appointed counsel in order to retain private counsel, appears without counsel at any proceeding after having been given a reasonable opportunity to retain counsel, the court may proceed with the matter, with or without securing a written waiver or appointing counsel under Section (c) to advise the defendant during the proceeding.

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Clearly, Appellant was a non-indigent defendant who appeared at his trial without counsel after having been given more than a reasonable opportunity by the trial judge to retain and secure his own counsel. The court properly proceeded with his trial, Appellant having waived his right to counsel by his own inaction and failure to secure counsel.

IT IS THEREFORE ORDERED affirming the judgment and sentence of the trial court.

IT IS FURTHER ORDERED remanding this case back to the Tempe City Court for all future proceedings.